

United States District Court, Northern District of Illinois

(10)

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	00 C 7300	DATE	4/9/2001
CASE TITLE	Lante Corporation vs. WHAT'SHOTNOW.COM		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

Memorandum Opinion and Order

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion and Order. We think that all the considerations stated in 28 U.S.C. Section 1404(a) dictate that this case be transferred to the Central District of California.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail A 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials WAH	Date/time received in central Clerk's Office	number of notices	Document Number 9
			4/10/01	
			docketing deputy initials	
			date mailed notice	
			mailing deputy initials	

should be resolved in favor of arbitration whether, the problem at hand is the construction of the contract language itself or an allegation of waiver, delay or a like defense to arbitrability.” Moses H. Cone Hospital v. Mercury Construction Corp., 460 U.S. 1, 24-25 (1983). Nor are we particularly impressed by plaintiff’s assertion that its claim to intellectual property is a claim to property, not to fees. After all, it appears to concede that the intellectual property belongs to plaintiff if the fees have been properly paid. Still, arbitration is a matter of consent between the parties and the scope of the arbitration provision is a matter of contract interpretation.

Here the arbitration provision is related to an escrow arrangement. If there was a good faith dispute about fees defendant was to deposit the contested amount in an escrow account “reasonably acceptable to the parties or approved by the arbitrator...” and the proceeds were to be distributed pursuant to the arbitrator’s award. If the deposit was not timely made, then plaintiff could terminate the Agreement. The arrangement appears to contemplate a way to safeguard both parties and resolve fee disputes while the work was in process. But defendant did not pay any disputed amounts into escrow, the work has been completed, and the relationship is at an end. Defendant claims that the work was not properly done, a dispute related to the warranty provisions, and those provisions are separate from the payment provisions embodying the arbitration arrangements. To escape the warranty restrictions on remedy to the reperforming of services, we assume that defendant is claiming that the necessary work was not done properly in a timely fashion.

We do not, however, decide the matter because this case clearly should be transferred to the Central District of California. Even if we did rule, the federal court in California could be and would be asked to reconsider the issues, and therefore we leave it to that court for determination.

Plaintiff has its main office in this district, the Agreement is to be governed by Illinois law, some relevant financial and other records may be located here, and plaintiff may want one of its executives and perhaps others to testify about the absence of any complaints by defendant at a meeting in Chicago and in telephone conversations. Those persons are, however, subject to plaintiff's direction.

In contrast, defendant is located near Los Angeles. The Agreement was negotiated by defendant's personnel and one or two of plaintiff's employees, both of whom are located in plaintiff's Los Angeles office. The entire performance was in California. The program manager for plaintiff, Michael Macy, is an independent contractor not subject to plaintiff's direction. He is located in the Los Angeles area. Defendant, like many dot com companies, has apparently fallen upon hard times. Those of the personnel who were involved with the project have, with the exception of Marc Von Arx, its executive vice-president and general counsel, left the company although they remain in the area. They number six and, we are told, each was substantially involved, one way or another, in what was being done or not done and what worked and what did not. And Von Arx is also there. Since the evidence in this case is likely primarily to center on what happened in California and the key witnesses are largely centered there as well and not subject to the subpoena power of this court, we think that all the considerations stated in 28 U.S.C. § 1404(a) dictate that this case be transferred to the Central District of California.

April 9, 2001.


JAMES B. MORAN
Senior Judge, U. S. District Court